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IN THE

Supreme Court of the United States

OCTOBER TERM, 1944

No. 1066

GENERAL ELECTRIC COMPANY,

Petitioner,

vs.

JEWEL INCANDESCENT LAMP COMPANY, *et al.*,

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

ALEXANDER C. NEAVE,
Counsel for Petitioner.

Dated: March 19, 1945.

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TO THE HONORABLE, THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Your petitioner, General Electric Company, respectfully prays for a writ of certiorari to the Circuit Court of Appeals for the Third Circuit to review the judgment entered by that Court in this case.

A certified transcript of the record in the case, including the proceedings in said Circuit Court of Appeals, is furnished herewith, in accordance with Rule 38 of this Court.

Opinions of the Courts Below

The opinion of the District Court (R. 327) is reported at 47 F. Supp. 818. The opinion of the Circuit Court of Appeals (R. 349) is reported at 146 Fed. (2d) 414.

Jurisdiction

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code as amended by the act of February 13, 1925, c. 229 (28 U. S. Code, Sec. 347).

The judgment of the Circuit Court of Appeals for the Third Circuit which petitioner seeks to have reviewed was entered December 22, 1944 (R. 353).

Summary and Short Statement of the Matter Involved

This is a suit for infringement of Pipkin patent No. 1,687,510, issued to the petitioner and entitled "Electric Lamp Bulb" (R. 141). There is a conflict of decision between different Circuit Courts of Appeals as to the validity of this patent.

The Pipkin invention, which has met with extensive and well deserved commercial success (R. 25), consists of a novel inside frosted incandescent lamp bulb.

The most common diffusing bulb prior to Pipkin's invention was a bulb frosted on the outside surface, as, for example, by treating the outside surface of the bulb with acid (R. 11, 15). Such a treatment eats away or irregularly etches into the glass surface a multitude of tiny crevices, millions of them to the square inch (R. 60). As the light passes through the glass, its irregular etched surface breaks up the rays, giving a cloudy, or frosted, appearance to the glass and reducing the glare.

Such outside frosted bulbs had the serious defect that the rough outside surface quickly became dirty and was almost impossible to clean, with the result that the light output was very soon greatly reduced (R. 12, 15). As early as 1903, twenty years before Pipkin, an *inside* frosted bulb had been suggested (Kennedy Patent No. 733,972, R. 259), such a bulb leaving the outside surface smooth and easily cleaned.

This suggestion, however, did not solve the problem of finding a satisfactory diffusing lamp bulb, because of a curious difference which was found to exist between an inside and outside frosted bulb. The ordinary frost-etching treatment removes only a slight amount of glass. When applied to the outside surface of a bulb it does not affect

the strength of the bulb materially. But when applied to the inside surface, such frosting reduces the bulb's strength so greatly that its strength is but a small fraction (about 5-7%) of its original value, and renders the bulb unfit for practical use on that account (R. 17; 142, ll. 31-53; 311, ll. 35-40).

Prior to Pipkin no one knew why inside frosted bulbs were so weak, nor how to remedy this weakness. Inside frosted bulbs had been recognized as desirable for more than twenty years, but because of their apparently unavoidable weakness their commercial production was impracticable.

Pipkin's problem was to devise a commercially strong inside frosted lamp bulb. The bulb that he invented, which solved that problem, was a bulb with a particular configuration on its inner surface. It is this new article, an inside frosted bulb with frosting of a particular configuration, that is the subject of the claims of the Pipkin patent.

Prior to the present case, the patent here in suit had previously been held valid and infringed by two Circuit Courts of Appeals.

It was held valid by the Circuit Court of Appeals for the Sixth Circuit in *General Electric Co.* v. *Save*, 82 Fed. (2d) 100, over the two prior patents primarily relied upon in the District Court in the present case (the Kennedy patent No. 733,972 and the Wood patent No. 1,240,398), which were also cited by the Patent Office against the Pipkin patent application.

It was also held valid by the Circuit Court of Appeals for the Second Circuit in *General Electric Co.* v. *Wabash*, 93 Fed. (2d) 671 (certiorari denied 303 U. S. 641; rehearing denied 303 U. S. 667). The defenses to validity in the *Wabash* case included all those advanced in the present case.

In the present case, neither the District Court nor the Circuit Court of Appeals apparently gave any weight to

the fact that the Pipkin patent had been granted by the Patent Office after careful consideration of the most relevant prior art and had been then held valid by two Circuit Courts of Appeals, all of the defenses to validity presented in this case having been presented in one or both of the previous cases.

The District Court held the patent invalid; and also held the patent not infringed because it interpreted the claims not as product claims, which they expressly are, but as importing the particular process described in the patent, which the Court said defendants did not practice.

On appeal, the Circuit Court of Appeals for the Third Circuit held the patent invalid and affirmed the judgment of the District Court dismissing the complaint. It did not discuss the defense of non-infringement, which was erroneously sustained by the District Court. The Court of Appeals recognized that Pipkin's disclosure "was an important one for the electric lamp bulb industry" (R. 352). Nevertheless, it held the patent invalid because, inexplicably, it thought the claims were for "nothing more than a product old in the art" (R. 353).

The Court of Appeals did not state, nor can we understand, what previous product it had in mind. Actually the record shows, without contradiction, that the bulb defined by the claims of the Pipkin patent was new and was an important step forward in the electric lamp bulb industry. Defendants did not even attempt to prove that an inside frosted bulb responding to the claims of the Pipkin patent ever existed prior to Pipkin's invention.

Questions Presented

Briefly stated, the questions presented in this case are:

1. Is the Pipkin patent No. 1,687,510 valid, as previously held by the Circuit Courts of Appeals for the Sixth and Second Circuits, or is it invalid as held

by the Circuit Court of Appeals for the Third Circuit in this case?

2. Are the claims of the Pipkin patent infringed by defendants' bulbs?

Specification of Errors

If the writ of certiorari is issued, petitioner intends to urge that the Circuit Court of Appeals for the Third Circuit erred:

1. In holding the Pipkin patent No. 1,687,510 invalid.

2. In affirming the judgment of the District Court.

3. In failing to hold the Pipkin patent valid and infringed.

Reason Relied Upon for the Granting of a Writ of Certiorari

The discretionary power of this Court is invoked on the following ground:

In holding that the Pipkin patent is invalid, the Circuit Court of Appeals for the Third Circuit has rendered a decision in direct conflict with the decision of the Circuit Court of Appeals for the Sixth Circuit and the decision of the Circuit Court of Appeals for the Second Circuit, both of which had previously held that patent valid and infringed.

This conflict of decision should be resolved by a decision of this Court.

Cases sustaining the granting of certiorari when there are conflicting decisions as to validity of a patent include:

Temco Co. v. *Apco Co.*, 275 U. S. 319;
General Electric Co. v. *Wabash Co.*, 304 U. S. 364;
Maytag Co. v. *Hurley Co.*, 307 U. S. 243;
Standard Brands v. *Yeast Corp.*, 308 U. S. 34;
Cuno Corp. v. *Automatic Devices Corp.*, 314 U. S. 84.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari be issued to the United States Circuit Court of Appeals for the Third Circuit to the end that this cause may be reviewed and determined by this Court; that the decree of the Circuit Court of Appeals for the Third Circuit be reversed; and that petitioner be granted such other and further relief as may be proper.

ALEXANDER C. NEAVE,
Counsel for Petitioner.

Dated: March 19, 1945.